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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE UNITED STATES OF AMERICA, Plaintiff, vs. CLIVEN BUNDY, Defendant.	CASE NO.: 2:16-cr-00046

DEFENDANT CLIVEN D. BUNDY'S PROPOSED JURY INSTRUCTIONS

COMES NOW, Defendant, CLIVEN BUNDY, by and through his attorney of record, BRET O. WHIPPLE, ESQ., of JUSTICE LAW CENTER, and hereby submits the following proposed jury instructions.

DATED this 28TH day of September, 2017.

JUSTICE LAW CENTER

/S/ Bret Whipple
Bret O. Whipple, Esq.
Nevada Bar No. 6168

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Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

INSTRUCTION NO. _____

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The indictment is not evidence. The defendant has pleaded not guilty to the charge[s]. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt.

INSTRUCTION NO. _____

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DEFENDANT'S DECISION NOT TO TESTIFY[1]

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the defendant did not testify.

INSTRUCTION NO. _____

[1] Directly from 9th Circuit Model Criminal Jury Instructions 3.3.

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DEFENDANT'S DECISION TO TESTIFY[2]

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

INSTRUCTION NO. _____

[2] Directly from 9th Circuit Model Criminal Jury Instructions 3.4.

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REASONABLE DOUBT—DEFINED[3]

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt. A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, you may find the defendant guilty.

INSTRUCTION NO. _____

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[3] From 9th Circuit Model Criminal Jury Instructions 3.5. The last line is corrected to comply with constitutional law and Supreme Court jurisprudence. By constitutional design, jurors are never under any *duty* to convict. See *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 572-73 (1977) (trial judges are prohibited from "directing the jury to come forward with [a guilty] verdict, regardless of how overwhelming the evidence may point in that direction"); *Gregg v. Georgia*, 428 U.S. 153, 199 n.50 (1976) (saying any legal system that would rob jurors of their discretion to acquit against the evidence would be "totally alien to our notions of criminal justice"); *Brotherhood of Carpenters v. United States*, 330 U.S. 395, 408 (1947) ("a judge may not direct a verdict of guilty, no matter how conclusive the evidence"); *United States v. Mentz*, 840 F.2d 315, 319 (6th Cir. 1988) ("Regardless of how overwhelming the evidence may be, the Constitution delegates to the jury, not to the trial judge, the important task of deciding guilt or innocence"); *Konda v. United States*, 166 F.91, 93 (7th Cir. 1908) (an accused has a right to a chance of a jury acquittal even where "the evidence against him is clear and uncontradicted, as he unquestionably would have if it were doubtful and conflicting"); B*uchnanan v United States*, 244 F.2d 916 (6th Cir. 1957) (a trial judge cannot instruct a jury to convict even if the facts of guilt are undisputed); *Dinger v. United States*, 28 F.2d 548, 550, 551(8th Cir. 1928) (trial judge's instruction that "if you believe the testimony of these agents . . . you would be justified, and in fact required, to find the defendant Dinger guilty" was a "most serious error" "not permissible in a criminal case"); *Billeci v. United States*, 184 F.2d 394, 399 (D.C. Cir. 1950) (must-convict instruction "is not the law. The law is that if the jury believes beyond a reasonable doubt that the defendant has committed the alleged offense it *should* find a verdict of guilty"). (emphasis added)

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WHAT IS EVIDENCE[4]

The evidence you are to consider in deciding what the facts are consists of:

(1) the sworn testimony of any witness; [and]

(2) the exhibits received in evidence[.] [; and]

[(3) any facts to which the parties have agreed.]

INSTRUCTION NO. _____

[4] 9th Circuit Model Criminal Jury Instruction 3.6.

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WHAT IS NOT EVIDENCE[5]

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly,= what the lawyers have said in their opening statements, [will say in their] closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence.

[In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.]

3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

INSTRUCTION NO. _____

[5] 9th Circuit Model Criminal Jury Instruction 3.7.

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DIRECT AND CIRCUMSTANTIAL EVIDENCE[6]

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

INSTRUCTION NO. _____

[6] 9th Circuit Model Criminal Jury Instruction 3.8.

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CREDIBILITY OF WITNESSES[7]

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

(1) the witness's opportunity and ability to see or hear or know the things testified to;

(2) the witness's memory;

(3) the witness's manner while testifying;

(4) the witness's interest in the outcome of the case, if any;

(5) the witness's bias or prejudice, if any;

(6) whether other evidence contradicted the witness's testimony;

(7) the reasonableness of the witness's testimony in light of all the evidence; and

(8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

INSTRUCTION NO. _____

[7] 9th Circuit Model Criminal Jury Instruction 3.9.

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SEPARATE CONSIDERATION OF MULTIPLE COUNTS—MULTIPLE DEFENDANTS[8]

A separate crime is charged against one or more of the defendants in each count. The charges have been joined for trial. You must decide the case of each defendant on each crime charged against that defendant separately. Your verdict on any count as to any defendant should not control your verdict on any other count or as to any other defendant.

All the instructions apply to each defendant and to each count [unless a specific instruction states that it applies only to a specific [defendant] [count]].

INSTRUCTION NO. _____

[8] 9th Circuit Model Criminal Jury Instruction 3.13.

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LOST OR DESTROYED EVIDENCE[9]

It is a general rule that the intentional spoliation or destruction of evidence relevant to a case (such as turning off a body camera immediately before a confrontation escalates or failing to record the most important radio traffic of a series of events) raises a presumption or an inference that this evidence would have been unfavorable to the person who destroyed or made the evidence unavailable.[10] The government bears the burden of justifying its conduct, and the defendant bears the burden of demonstrating prejudice.[11]

INSTRUCTION NO. _____

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[9] from 9th Circuit Model Criminal Jury Instructions 4.18 (Comment).
[10] *Equitable Trust Co. v. Gallagher* 77 A.2d 548 ; "[t]hat evidence willfully suppressed would be adverse if produced." The list provided by that Statute "is illustrative, not exclusive." See also *Privette v. Faulkner*, 92 Nev. 353, (1976).
[11] United States v. Sivilla, 714 F.3d 1168, 1173 (9th Cir. 2013).

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MISSING WITNESS[12]

Similarly, it may be reasonably inferred that an important witness who is peculiarly within the power of a party to produce but who is conveniently or suspiciously missing would likely have provided unfavorable testimony to the party which has power to produce or conceal him. If a party knows of the existence of an available witness on a material issue and such witness is within his control, and if, without satisfactory explanation, he fails to call him, the jury may draw the inference that the testimony of the witness would not have been favorable to such party.[13]

INSTRUCTION NO. _____

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[12] from 9th Circuit Model Criminal Jury Instructions 4.13 (Comment).
[13] *Culbertson v. The Steamer Southern Belle*, 59 U.S. 584 (1855).

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ENTRAPMENT[14]

The defendant contends that he was entrapped by government agents. The government has the burden of proving beyond a reasonable doubt that the defendant was not entrapped. The government must prove either:

1. the defendant was predisposed to commit the crime before being contacted by government agents, or

2. the defendant was not induced by the government agents to commit the crime.

When a person, independent of and before government contact, is predisposed to commit the crime, it is not entrapment if government agents merely provide an opportunity to commit the crime. In determining whether the defendant was predisposed to commit the crime before being approached by government agents, you may consider the following:

1. whether the defendant demonstrated reluctance to commit the offense;

2. the defendant's character and reputation;

3. whether government agents initially suggested the criminal activity;

4. whether the defendant engaged in the criminal activity for profit; and

5. the nature of the government's inducement or persuasion.

In determining whether the defendant was induced by government agents to commit the offense, you may consider any government conduct creating a substantial risk that an otherwise innocent person would commit an offense, including persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward, or pleas based on need, sympathy or friendship.

INSTRUCTION NO. _____

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[14] Directly from 9th Circuit Model Criminal Jury Instructions 6.2.

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SENTENCING ENTRAPMENT[15]

Sentencing entrapment is a separate defense from entrapment and occurs when law enforcement authorities appear—by a preponderance of evidence—to have sought a prosecution to maximize the potential criminal sentences of defendants. If you conclude that authorities could have sought lower-level charges against defendants, but instead led defendants to commit acts so that Defendants could be prosecuted for higher-level charges, you must find the Defendants not guilty.

INSTRUCTION NO. _____

[15] Derived from comments associated with 9th Cir. Model Crim. Jury Inst. 6.2A.

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SELF–DEFENSE[16]

The defendant has offered evidence of having acted in self-defense. Use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of unlawful force. However, a person must use no more force than appears reasonably necessary under the circumstances.

Force likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm. The government must prove beyond a reasonable doubt that the defendant did not act in reasonable self-defense.

INSTRUCTION NO. _____

[16] Directly from 9th Circuit Model Criminal Jury Instructions 6.8.

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PUBLIC AUTHORITY OR GOVERNMENT AUTHORIZATION DEFENSE[17]

The defendant contends that if he committed the acts charged in the indictment, he did so at the request or authorization of a government agent. Government authorization of the defendant's acts legally excuses the crime charged.

The defendant must prove by a preponderance of the evidence that he had a reasonable belief that he was acting as an authorized government agent to assist in law enforcement activity at the time of the offense charged in the indictment. A preponderance of the evidence means that you must be persuaded that the things the defendant seeks to prove are more probably true than not true. This is a lesser burden of proof than the government's burden to prove beyond a reasonable doubt each element of specify crime charged. If you find that the defendant has proved that he reasonably believed that he was acting as an authorized government agent as provided in this instruction, you must find the defendant not guilty of the crimes in the indictment.

INSTRUCTION NO. _____

[17] Directly from 9th Circuit Model Criminal Jury Instructions 6.11, except for addition of "or authorization."

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ALIBI DEFENSE[18]

Evidence has been admitted that a defendant was not present at the time and place of the commission of a crime charged in the indictment. The government has the burden of proving beyond a reasonable doubt the defendant was present at that time and place.

If, after consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time the crime was committed, you must find the defendant not guilty.

INSTRUCTION NO. _____

[18] 9th Cir. Model Crim. J. Inst. 6.1.

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MERE PRESENCE[19]

On the other hand, a Defendant's mere presence at the scene of a crime or mere knowledge that a crime is being committed is not sufficient to establish that the defendant committed a crime. The defendant must be a participant and not merely a knowing spectator. The defendant's presence may be considered by the jury along with other evidence in the case.

INSTRUCTION NO. _____

[19] Derived from 9th Cir. Model Crim. J. Inst. 6.10.

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DUTY TO DELIBERATE[20]

When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court. You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. [And remember that no juror can ever be punished for his verdict.]

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right. It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

INSTRUCTION NO. _____

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[20] From 9th Cir. Model Crim. J. Inst. 7.1. The last line in the second paragraph is added. Since *Bushell's Case* in 1670 (Howell's State Trials, Vol. 6, Page 999 (6 How. 999)), Anglo-American law has enshrined the principle that no juror can ever be punished for his verdict.

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CONSIDERATION OF EVIDENCE—CONDUCT OF THE JURY[21]

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings. If any juror is exposed to any outside information, please notify the court immediately.

INSTRUCTION NO. _____

[21] 9th Cir. Model Crim. J. inst. 7.2.

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JURY CONSIDERATION OF PUNISHMENT[22]

The punishment provided by law for this crime is for the court to decide. You ~~may~~ should not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

INSTRUCTION NO. _____

[22] Modified from 9th Cir. Model Crim. J. Inst. 7.4. The Supreme Court has never pronounced that jurors may not ponder or 'consider' the sentencing implications of their verdicts. Indeed, the law requires that jurors consider such factors in some instances. The plain structure of Article III makes clear that jurors and judge are independent and equal regarding each other—rather than subordinate under or dominant over each other.

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VERDICT FORM[23]

A verdict form has been prepared for you. [Explain verdict form as needed.] After you have reached unanimous agreement on a verdict, your [presiding juror] [foreperson] should complete the verdict form according to your deliberations, sign and date it, and advise the [clerk] [bailiff] that you are ready to return to the courtroom.

INSTRUCTION NO. _____

[23] 9th Cir. Model Crim. J. Inst. 7.5.

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COMMUNICATION WITH COURT[24]

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

INSTRUCTION NO. _____

[24] 9th Cir. Model Crim. J. Inst. 7.6.

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RIGHT-OF-WAY INSTRUCTION

Persons have a right to assemble in public open spaces and rights-of-way so long as they do not obstruct the normal flow of traffic.[25]

INSTRUCTION NO. _____

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[25] *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1034 (9th Cir. 2009) (in public open spaces "the substantial governmental interests are 'only to regulate competing uses and provide notice to the municipality of the need for additional public safety and other services" (quoting *Santa Monica Food Not Bombs v. City of Santa Monica* ("Food Not Bombs"), 450 F.3d 1022, 1049-52 (9th Cir. 2006) (Berzon, J., dissenting in part).

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TOQUOP WASH

The area of Toquop Wash directly beneath Interstate 15 west of Mesquite is Mesquite City property. It is a public right of way.[26]

INSTRUCTION NO. _____

[26] Waterways—especially named waterways—are the property of the states, up to their high water marks. *Shively v. Bowlby*, 152 U.S. 1 (1894). Such waterways are public right of ways. Tocquop Wash is a named streambed and a right of way. *See also* 43 U.S.C. § 1769(a) of the Federal Land and Policy Management Act (FLPMA) and the Savings Provisions listed under 43 U.S.C. § 1701 (protecting rights-of-way on federal lands).

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PROMISSORY ESTOPPEL

A government, agency or entity that makes promises which a reasonable person would interpret as allowing certain behavior cannot later punish the recipients of the promises for acting in accordance with the promises.

INSTRUCTION NO. _____

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RIGHT TO FILM GOVERNMENT

Persons have a First Amendment right to record the public activities of police or other government agents. This right is clearly established, and police have no qualified immunity from suit for wrongful arrests of persons photographing or filming them in public.[27]

INSTRUCTION NO. _____

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[27] *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995) (recognizing a "First Amendment right to film matters of public interest" including police conduct in public); *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011) (private citizen has the right to record video and audio of public officials in a public place, and arrest of the citizen for a wiretapping violation violated his First and Fourth Amendment rights); *Gericke v. Begin*, 753 F.3d 1, 9 (1st Cir. 2014) (holding that a First Amendment right to film a police officer making a traffic stop is clearly established, and police have no "qualified immunity" from lawsuit over such arrests); *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (holding that there is a First Amendment right to videotape police activity, subject to reasonable time, manner and place restrictions); *ACLU v. Alvarez*, 679 F.3d 583 (7th Cir. 2012); *Gericke v. Begin*, 753 F.3d 1 (1st Cir. 2014); *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) ("The First Amendment protects the right to gather information about what public officials do on public property," including the right "to photograph or videotape police conduct"); *Gilles v. Davis*, 427 F.3d 197, 212 n. 14 (3rd Cir.2005) ("[V]ideotaping or photographing the police in the performance of their duties on public property may be protected activit[ies]").

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FIRST AMENDMENT FREE SPEECH ZONES

A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Government may not suppress freedom of speech or press by confining it to small areas where people's voices or criticisms go unheard.[28] Nor may the government use the justification of public safety to confine free speech rights on any general scale.[29] Although the government may impose reasonable "time, place, or manner" regulations on speech in sensitive public places, such regulations must be narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of the information.[30]

INSTRUCTION NO. _____

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[28] *Terminiello v. Chicago*, 337 U.S. 1 (1949) (emphases added). "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy." *Cantwell v. Connecticut*, 310 U.S. 296, 310 (1940) (emphasis added). "[I]f there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate." *United States v. Schwimmer*, 279 U.S. 644, 654-55 (1929) (Holmes, J., dissenting) (emphasis added); *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1021 (9th Cir. 2009) (regulations on speech protesting government action are presumptively invalid) (citing *Burk v. Augusta-Richmond County*, 365 F.3d 1247, 1254-55 (11th Cir. 2004) (finding an ordinance restricting public gatherings to be unlawfully content-based because it was "directed only to communicative activity, rather than to all activity, and its applicability turn[ed] solely on the subject matter of what a speaker might say").

[29] *Smith v. Tarrant County College Dist.*, 694 F. Supp. 2d 610 (N.D.Tex. 2010) (enjoining college from prohibiting students from wearing empty holsters in classrooms to protest college's no-gun policy).

[30] *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293 (1984)). *Cuviello v. City and County of San Francisco*, 940 F.Supp.2d 1071 (N.D.Cal. 2013)(upholding claim that City's "free speech zone" aimed at corralling circus protesters into less than 1% of public space violated 1st amendment rights under section 1983). Public places include public open spaces, where the substantial governmental interests are "only to regulate competing uses and provide notice to the municipality of the need for additional public safety and other services." *Food Not Bombs*, 450 F.3d at 1042.

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SELF HELP

A person may rely on self-help when authorities are unavailable, unable, or unwilling to protect his fundamental life, liberty or property.[31] Americans have no duty to passively submit to government violations of their freedoms of speech. They may resist attempts to abridge freedom of speech or press, and to protest government actions.[32]

INSTRUCTION NO. _____

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[31] Nevada: "All men are by Nature free and equal and have certain inalienable rights among which are those of enjoying and defending life and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and happiness[.]"21 NEV. CONST. art. I, § 1. See also *Goodwin v. Ford Motor Credit Co.*, 970 F. Supp. 1007, 1012 (M.D. Al. 1997) (speaking of the right of self-help to repossess property).

[32] Grosjean v. American Press Co., 297 U.S. 233 (1936).

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WANTON DESTRUCTION OF PROPERTY CONSTITUTES UNREASONABLE EXECUTION OF A COURT ORDER AND MAY JUSTIFY SELF-HELP[33]

The terms of a court order must be strictly construed.[34] When government agents go beyond the language of a court order and engage in wanton control and destruction of property, nongovernment persons may rely on self help until the law is restored.[35] A person may intervene by use of force in assisting another resist an unlawful arrest, so long as the person makes a reasonable effort to inquire into the nature and purpose of the attempted arrest and the authority of those making it, unless circumstances make such inquiry impossible or fruitless.[36]

INSTRUCTION NO. _____

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[33] *Fuller v. Vines*, 36 F.3d 65, 68 (9th Cir. 1994), "The destruction of property by state officials poses as much of a threat, if not more, to people's right to be 'secure . . . in their effects' as does the physical taking of them." overruled on other grounds, Robinson v. Solano County, 278 F.3d 1007, 1013 (9th Cir. 2002) (citation omitted). "The killing of [a] dog is a destruction recognized as a seizure under the Fourth Amendment" and can constitute a cognizable claim under § 1983. Id.; *Deorle v. Rutherford*, 272 F.3d 1272, 1279 (9th Cir. 2001). "A seizure becomes unlawful when it is 'more intrusive than necessary.'" *Ganwich v. Knapp*, 319 F.3d 1115, 1122 (9th Cir. 2003) (quoting *Florida v. Royer*, 460 U.S. 491, 504 (1983)). To determine whether the destruction of property was reasonable during the execution of court orders, courts balance "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Graham v. Connor*, 490 U.S. 386, 396, 104 L. Ed. 2d 443, 109 S. Ct. 1865 (1989) (citation and internal quotation marks omitted).

[34] Noli v. Comm'r of Internal Revenue, 860 F.2d 1521, 1525 (9th Cir. 1988)) (citing Casperone v. Landmark Oil & Gas Corp., 819 F.2d 112, 114 (5th Cir. 1987)).

[35] *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962 (9th Cir. 2005) (officers executing search warrants acted unreasonably and excessively when they simultaneously executed search warrants at the residences and clubhouse of Hells Angels seizing "truckloads" of personal property, including customized motorcycles, a refrigerator door, and a piece of concrete sidewalk, and shot and killed dogs while seeking to prove that the club was a "gang").

[36] *United States v Heliczer*, 373 F2d 241 (2nd Cir. 1967), cert den (1967) 388 US 917. (goes to Ryan Bundy's right to stop van on road while observing Dave's arrest).

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Separate Consideration of Charges[37]

Each count charges a separate crime against one or more of the Defendants. Although each of these charges have been joined for this trial, you must decide each charge against each Defendant separately. Your verdict on any count as to any Defendant should not control your verdict on any other count or as to any other Defendant.

Remember each of the Defendants have pleaded Not Guilty to each of the charges against them, and they are presumed to be innocent of any wrongdoing. That presumption of innocence remains in full force and effect as to each of the charges unless and until the government overcomes the presumption by proving a Defendant guilty of a particular charge beyond a reasonable doubt.

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[37] 9th Cir. Model Crim. J. Inst. 3.13.

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CONSPIRACY CHARGE AGAINST THE DEFENDANTS (COUNT ONE)

Before I instruct you as to the elements the government must prove beyond a reasonable doubt in order for you to find any Defendant guilty of the Conspiracy charge in Count One, I will explain in general the law relating to the crime of conspiracy. A conspiracy is a kind of criminal partnership – an agreement of two or more persons to engage in illegal conduct. The crime of conspiracy is the agreement itself to do something unlawful; it does not matter whether the illegal act they agreed upon was actually committed or completed.

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COUNT ONE – CONSPIRACY TO COMMIT AN OFFENSE

ELEMENTS[38]

The defendants are charged in Count One of the Superseding Indictment with Conspiring to Commit an Offense Against the United States, in violation of Section 371 of Title 18 of the United States Code. In order for a defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about March 28, 2014, and ending on or about March 2, 2016, there was an agreement between two or more persons to commit at least one of the following crimes charged in the Superseding Indictment:

1. Assault on a Federal Officer, in violation of Title 18, United States Code, Section 111(a)(1) and (b);
2. Threatening a Federal Law Enforcement Officer, in violation of Title 18, United States Code, Section 115(a)(1)(B);
4. Obstruction of the Due Administration of Justice, in violation of Title 18, United States Code, Section 1503;
5. Interference with Interstate Commerce by Extortion, in violation of Title 18, United States Code, Section 1951; or
6. Interstate Travel in Aid of Extortion, in violation of Title 18, United States Code, Section 1952.

In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt: First, beginning on or about March 28, 2014, and ending on or about March 2, 2016, there was an agreement between two or more persons to commit at least one crime as charged in the indictment; [and] Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help

[38] 9th Cir. Model Crim. J. Inst. 8.20.

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accomplish it[.] [; and] [Third, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy.

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed. For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

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Co-Conspirator Statements and Actions

You have heard evidence that certain persons who are alleged to be co-conspirators said or did certain things. The acts and statements of any conspiracy member are treated as the acts and statements of all conspiracy members only if the acts or statements were performed or spoken during the existence of and in furtherance of the conspiracy.

An informant may not be considered a co-conspirator. Thus, the acts and statements of an informant cannot form the basis of an illegal conspiracy or be attributed to any Defendant. In order to consider a co-conspirator statement as evidence against a defendant, you first must find that (1) the conspiracy alleged in Count One was in existence at the time the statement was made; (2) the person who made the statement (the declarant) and the particular Defendant were participants in the conspiracy; and (3) the declarant made the statement during and in furtherance of the conspiracy.

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COUNT TWO – CONSPIRACY TO IMPEDE OR INJURE

A FEDERAL OFFICER– ELEMENTS

The defendants are charged in Count Two of the Superseding Indictment with conspiracy to prevent by force, intimidation, or threats of violence, federal law enforcement officers from discharging the duties of their office under the United States, and to induce by force, intimidation, and threats, federal law enforcement officers to leave the place where their duties were required to be performed, in violation of Section 372 of Title 18 of the United States Code. In order for a defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about March 28, 2014, and ending on or about March 2, 2016, there was an agreement between two or more persons to do one of the following:

1. to prevent, by force, intimidation, or threats, federal law enforcement officers from discharging the duties of their office under the United States, or

2. to induce, by force, intimidation, or threats, any federal law enforcement officer of the United States to leave the place where their duties were required to be performed; and

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it.

For a conspiracy to have existed, like in Count One, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the alleged objects of the conspiracy with all of you agreeing as to the particular object which the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other

hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

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CONSTITUTIONAL RIGHTS TO PEACABLY ASSEMBLE, PETITION AND PROTEST

In determining whether the government has proved any Defendant guilty of the conspiracy charged in Count One, you must consider Defendants' assertion that they were engaging in lawful speech and conduct, including political protest, protected by either the First Amendment or Second Amendment to the United States Constitution.

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Militia Activities Not Evidence of Unlawful Conspiracy

Under the Second Amendment to the United States Constitution, a person has the right "to keep and bear arms," that is, to own, to possess, and to carry firearms, and to participate in, or associate with, militia activity, including when lawfully exercising First Amendment rights.[39] Militia activity is not illegal and cannot form the basis for a claim of unlawful conspiracy or conspiracy to impede federal officials from performing their duties.

INSTRUCTION NO. _____

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[39] This instruction is especially appropriate if the United States characterizes certain militia-related statements attributed to the Defendants generally as evidence of their alleged conspiracy to use illegal force, intimidation, or threat or otherwise to violate Federal law. Numerous Supreme Court decisions directly uphold the lawfulness and constitutionality of militia activity as a lawful check on government. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570, 618 (2008) (quoting J. Pomeroy, *An Introduction to the Constitutional Law of the United States* §239, pp. 152-153 (1868) ("[The purpose of the Second Amendment is] to secure a well-armed militia. . . . But a militia would be useless unless the citizens were enabled to exercise themselves in the use of warlike weapons. To preserve this privilege, and to secure to the people the ability to oppose themselves in military force against the usurpations of government, as well as against enemies from without, that government is forbidden by any law or proceeding to invade or destroy the right to keep and bear arms. . . ."); *McDonald v. City of Chicago*, 561 U.S. 742, 768 (2010) ("During the 1788 ratification debates, the fear that the federal government would disarm the people in order to impose rule through a standing army or select militia was pervasive in Antifederalist rhetoric" (quoting *Heller*, supra, at 598).

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ELEMENTS OF COUNT TWO: CONSPIRACY TO IMPEDE OFFICERS OF THE UNITED STATES

Each of the Defendants are charged in Count 2 with Conspiracy to Impede Officers of the United States in violation of 18 United States Code § 372. In order for any Defendant to be found guilty of Count One, the government must prove as to that Defendant each of the following elements beyond a reasonable doubt: First, beginning on or about _____, and continuing through on or about _____, there was an agreement between two or more persons, and an object of that agreement was to prevent an officer or officers of the United States _____ from discharging the duties of his or her office by force, intimidation, or threat; and Second, the particular Defendant became a member of the conspiracy knowing of that objective and specifically intending to help accomplish it.

As to the phrase "on or about" a range of dates, although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed in a range of dates reasonably near the dates alleged in a particular charge, it is not necessary for the government to prove that the offense was committed precisely on the dates charged.

In order for speech or expressive conduct to qualify as "intimidation" or a "threat" in this context, the speaker or actor must intend his or her words or conduct to intimidate or to be a threat, and those words or conduct must also be such that a reasonable person observing them would foresee that they would be interpreted as a serious expression of intent to harm or assault.

To prove a particular Defendant entered into an agreement an object of which was to prevent an officer of the United States National Park Service and/or Bureau of Land Management from discharging the duties of his or her office by "threat" or "intimidation," the government must prove the threatened action was illegitimate. In other words, it is neither a "threat" nor
"intimidation" in this context if a person threatens to take a legitimate action.

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To prove a particular Defendant who became a member of the alleged conspiracy did so "knowing" an object thereof was preventing an officer of the United States from discharging the duties of his or her office by force, intimidation, or threat, the government must prove that Defendant was aware of that objective and did not act through ignorance, mistake, or accident.

To prove a particular Defendant who became a member of the alleged conspiracy did so "specifically intending" to help accomplish such objective, the government must prove that Defendant had a purpose or conscious desire to do so. You may consider evidence of a Defendant's words, acts, or omissions, along with all of the other evidence, in deciding whether a particular Defendant knew of and specifically intended to help accomplish such objective.

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COUNT FIVE – ASSAULT ON FEDERAL OFFICER OR EMPLOYEE
[WITH A DEADLY OR DANGEROUS WEAPON]

The defendant is charged in [Count _____ of] the indictment with assault on a federal officer in violation of Section 111(b) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant forcibly assaulted [name of federal officer or employee];

Second, the defendant did so while [name of federal officer or employee] was engaged in, or on account of [his] [her] official duties; and

Third, the defendant used a deadly or dangerous weapon.

There is a forcible assault when one person intentionally strikes another, or willfully attempts to inflict injury on another, or intentionally threatens another coupled with an apparent ability to inflict injury on another which causes a reasonable apprehension of immediate bodily harm.

A reasonable apprehension of immediate bodily harm is determined with reference to a reasonable person aware of the circumstances known to the victim, not with reference to all circumstances, including circumstances not seen by the victim.[40]

INSTRUCTION NO. _____

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[40] *United States v. Acosta-Sierra*, 690 F.3d 1111, 1121 (9th Cir. 2012).

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8.5 ASSAULT ON FEDERAL OFFICER OR EMPLOYEE—DEFENSES

The defendant asserts that [he] [she] acted in self-defense. It is a defense to the charge if (1) the defendant did not know that [name of federal officer or employee] was a federal [officer] [employee], (2) the defendant reasonably believed that use of force was necessary to defend oneself against an immediate use of unlawful force, and (3) the defendant used no more force than appeared reasonably necessary in the circumstances.

Force which is likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm. In addition to proving all the elements of the crime beyond a reasonable doubt, the government must also prove beyond a reasonable doubt either (1) that the defendant knew that [name of federal officer or employee] was a federal [officer] [employee] or (2) that the defendant did not reasonably believe force was necessary to defend against an immediate use of unlawful force or (3) that the defendant used more force than appeared reasonably necessary in the circumstances.

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COUNT EIGHT – THREATENING A FEDERAL LAW ENFORCEMENT OFFICER – ELEMENTS

The defendants are charged in Count Eight of the Superseding Indictment with threatening to assault a federal officer in violation of Section 115 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant made a statement or did an act that constituted a threat to assault a federal law enforcement officer;

Second, the defendant intended the statement or act to be a threat or made the statement or did the act knowing the words or actions would be viewed as a threat;

Third, that a reasonable person making the statement or doing the act would foresee that the statement or act would be interpreted by those to whom the maker communicated the statement or act as a serious threat;

Fourth, that the threat was made with the intent to impede, intimidate, or interfere with a federal law enforcement officer or to retaliate for the performance of his or her official duties.

A threat is a serious statement expressing an intention to inflict bodily injury at once or in the future, as distinguished from idle or careless talk, exaggeration, or something said in a joking manner.

INSTRUCTION NO. _____

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OBSTRUCTION OF JUSTICE[41]

The defendant is charged in [Count _____ of] the indictment with obstruction of justice in violation of Section 1503 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First the defendant influenced, obstructed, or impeded, or tried to influence, obstruct, or impede the due administration of justice; and

Second, the defendant acted corruptly, or by threats or force, or by any threatening communication, with the intent to obstruct justice.

[The government need not prove that the defendant's sole or even primary intention was to obstruct justice so long as the government proves beyond a reasonable doubt that one of the defendant's intentions was to obstruct justice. The defendant's intention to obstruct justice must be substantial.]

INSTRUCTION NO. _____

[41] 9th Cir. Model Crim. J. Inst. 8.131.

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CORRUPTLY—DEFINED[42]

The term corruptly' means 'performed with the intent to secure an unlawful benefit for oneself or another.'" [43] "Corruptly" must reflect consciousness of wrongdoing.[44]

INSTRUCTION NO. _____

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[42] Derived from 9th Circuit Model Criminal Jury Instruction 3.15.
[43] *United States v. Massey*, 419 F.3d 1008, 1010 (9th Cir. 2005) (citing *United States v. Workinger*, 90 F.3d 1409, 1414 (9th Cir. 1996)).
[44] *Arthur Andersen LLP v. United States*, 544 U.S. 696, 704-06 (2005).

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HOBBS ACT—EXTORTION BY FORCE[45]

(18 U.S.C. § 1951)

Defendants CLIVEN D. BUNDY, RYAN C. BUNDY, AMMON E. BUNDY, RYAN W. PAYNE, and PETER T. SANTILLI, Jr. are charged in Count 12 of the indictment with extortion by force, violence or fear in violation of Section 1951 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant induced _____ to part with property by the wrongful use of actual or threatened force, violence, or fear;

Second, the defendant acted with the intent to obtain property;

Third, commerce from one state to another was affected in some way; and

Fourth, the defendant did something that was a substantial step toward committing the crime. Mere preparation is not a substantial step toward committing the crime. To constitute a substantial step, a defendant's act or actions must demonstrate that the crime will take place unless interrupted by independent circumstances.

INSTRUCTION NO. _____

[45] 9th Cir. Model Crim. J. Inst. 8.142.

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CLAIM OF RIGHT DEFENSE TO EXTORTION[46]

A Defendant's claim of right to the property is not a defense to extortion by actual or threatened force, violence, or fear.[47] But Count 12 alleges extortion by both actual or threatened force, violence, or fear as well as by wrongful threat of economic loss. A claim of right to the property is a defense to an allegation of extortion by wrongful threat of economic loss.[48] A threat is wrongful if the defendant knew he was not entitled to obtain the property.

INSTRUCTION NO. _____

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[46] Derived from 9th Cir. Model Crim. J. Inst. 8.142A.

[47] *United States v. Daane*, 475 F.3d 1114, 1120 (9th Cir. 2007) (quoting with approval from *United States v. Zappola*, 677 F.2d 264, 268-69 (2d Cir. 1982)).

[48] *United States v. Sturm*, 870 F.2d 769, 773-74 (1st Cir. 1989); *Young v. JTB Corp.*, 81 Fed.Appx. 656, 657-58 (9th Cir. 2003) (it is "undisputed that the acts in question were the result of a contractual relationship between Charley's Taxi and the Plaintiffs. Given that the contractual terms have been determined to be lawful under Hawaii law, and that the actions of Charley's Taxi were under a claim of right, not force or fear, the extortion claim is not legally viable."); *United States v. Daane*, 475 F.3d 1114, 1120 (9th Cir. 2007) (finding claim of right defense not applicable because "[a]lthough Arn, Tere Daane, Trent, Stich, and Miller invested only $375,062 with Murdock, they intended to force Murdock to transfer over $1,700,000" back to them).

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IT IS THE BURDEN OF THE GOVERNMENT TO MAKE ITS ACCUSATIONS IN A SIMPLE, EASY TO UNDERSTAND MANNER.

If an allegation of the prosecution is confusing, overly complicated, or difficult to understand, the verdict must be not guilty.

INSTRUCTION NO. _____

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CONSTITUTIONALLY PROTECTED SPEECH AND CONDUCT

In determining whether the government has proved any Defendant guilty of the conspiracy charged in Count Two, you must consider Defendants' assertion that they were engaging in lawful speech and conduct, including political protest, protected by either the First Amendment or Second Amendment to the United States Constitution.

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PROTECTED SPEECH AND EXPRESSION UNDER THE FIRST AMENDMENT

Defendants' political beliefs are not on trial. Defendants cannot be convicted based on unpopular beliefs. Although speech and assembly are generally protected by the First Amendment, that protection is not absolute, and it is not a defense to allegations of unlawful conspiracies, assaults, threats, obstructions, extortions or other crimes charged in the indictment. For example, "threats" and "intimidation," as defined in these instructions, are not protected by the First Amendment. On the other hand, a defendant's speech that merely encourages others to commit a crime is protected by the First Amendment unless that defendant intended the speech and expressive conduct to incite an imminent lawless action that was likely to occur.

Thus, you may consider the intent of a Defendant's speech and expressive conduct in deciding whether the government proved beyond a reasonable doubt that any Defendant committed any of the crimes alleged in the indictment.

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RIGHT TO POSSESS FIREARMS UNDER THE SECOND AMENDMENT

The Second Amendment right of any person to possess and to carry firearms is not on trial in this case. Under the Second Amendment to the United States Constitution, a person has the right "to keep and bear arms," that is, to own, to possess, and to carry firearms, including when lawfully exercising First Amendment rights.

This Second Amendment right, however, is not absolute. For example, the use of unlawful "threats" or "intimidation" as defined in these instructions is not protected by the Second Amendment. Thus, you may consider evidence as to the reasons any person, including any Defendant, may have possessed or carried firearms when you consider whether the government proved any Defendant committed any of the crimes alleged in the indictment.

INSTRUCTION NO. _____

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TRUE THREATS

Many idle or broadly worded threats fall into the category of protected speech. Only 'true threats' may expose someone to criminal punishment. True threats are defined as "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."[49] Ambiguous[50] or rhetorical[51] statements, or statements which are merely violent[52] or frightening[53] do not qualify as true threats. Further, the First Amendment protects such speech even when it is designed to embarrass or otherwise coerce another into action.[54] A communication that contains language which is equally susceptible of two interpretations, one threatening, and the other nonthreatening, is not a true threat unless the government offers evidence proving beyond a reasonable doubt "serving to remove that ambiguity."[55] Similarly, statements made to a random audience and not actually directed toward the actual purportedly-intended victim recipient constituted protected speech.[56]

Eight counts of the indictment (Counts 2, 6, 7, 9, 10, 11, 12, and 13) require the government to prove the existence of true threats. If you find that the government failed to

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[49] *United States v. Sutcliffe*, 505 F.3d 944, 961 (9th Cir. 2007). *United States v. Black*, 538 U.S. at 359-60.
[50] *United States v. Hanna*, 293 F.3d 1080 (9th Cir. 2002).
[51] *Watts v. United States*, 394 U.S. 705, 706 (1969) (per curiam) (statement at anti-draft rally that "I am not going" to respond to draft notice, and "If they ever make me carry a rifle the first man I want to get in my sights is [President] L.B.J." found to be protected speech, not a true threat)
[52] *United States v. Bagdasarian*, 652 F.3d 1113 (9th Cir. 2011) (messages posted by a defendant on an Internet message board, "Re: Obama fk the niggar, he will have a 50 cal in the head soon" and "shoot the nig country fkd for another 4 years + " held not to be a true threat).
[53] *Fogel v. Collins*, 531 F.3d 824, 831 (9th Cir. 2008); *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life Activists*, 290 F.3d 1058 (9th Cir. 2002) (en banc) (holding that website referencing hypothetical killing of abortion doctors—even with already-murdered abortion doctors depicted with a line through their images—constituted protected speech)
[54] *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 910 (1982).
[55] *United States v. Barcley,* 452 F.2d 930, 933 (8th Cir. 1971).
[56] *United States v. Baker*, 890 F.Supp. 1375 (E.D. Mich. 1995) (indictment for threat communicated by e-mail to unspecified recipients not "true threat;" indictment dismissed).

prove the existence of true threats intended to communicate serious expressions of intent to commit actual acts of unlawful violence to particular individuals or groups with regard to each respective Defendant and each respective count, you must find the defendants not guilty. Even if you find that a true threat was communicated, your analysis must be limited to those defendants who actually had the specific intent to so communicate the threat.

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FEDERAL LAND OWNERSHIP WITHIN A STATE

Federal ownership of land within a state must be acquired by purchase with the consent of the legislature, which is held to include the acquisition of property by eminent domain when that proceeding is authorized by the legislature.[57]

INSTRUCTION NO. _____

[57] *United States v. Cornell*, 2 Mason, 60; *United States v. Jones*, 109 U. S. 514.

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An attempt to influence public officials to refrain from carrying out actions authorized or compelled by a court order, when done through political protest and the exercise of the rights of speech and assembly under the First Amendment, is not "corrupt" conduct of the type criminalized by 18 U.S.C. 1503.

If you find that the defendants' conduct was an attempt to influence government officials but that this attempt was uniformly conducted through the exercise of political protest, free speech, and assembly, then this attempt to influence government officials is not "corrupt" and you must find that the defendants have not violated 18 U.S.C. 1503.

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CERTIFICATION OF SERVICE

I hereby certify that on the 28TH day of September, 2017 a true and correct copy of the foregoing DEFENDANT CLIVEN D. BUNDY'S PROPOSED JURY INSTRUCTIONS was delivered via E-filing to:

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